IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES	**CRIMINAL ACTION**
v.	
WARREN NICHOLS	**NO. 15-85 -01**
RAUL OSVALDO ROSALES, also known as "SAULO SOLORAZANO"	**-02**

M E M O R A N D U M

DuBois, J. **October 8, 2015**

I. INTRODUCTION

Defendants Warren Nichols and Raul Rosales are charged in an Indictment with conspiracy to distribute 500 grams or more of cocaine, and with possession with intent to distribute, and aiding and abetting possession with intent to distribute, 500 grams or more of cocaine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B). Defendant Nichols is also charged with possession of marijuana, in violation of 21 U.S.C. § 844. Both defendants moved separately to suppress physical evidence and post-arrest statements obtained during a seizure of defendants and a search of their personal belongings. An evidentiary hearing and oral argument on the Motions to Suppress were held on September 18, 2015. For the reasons stated below, the Motions are denied.

II. FACTS[1]

On the evening of February 3, 2015, Homeland Security Investigations (HSI) Special Agent Brian Leigh, in Philadelphia, was informed that a small plane owned and piloted by Warren Nichols was suspected of being used to transport drugs from Los Angeles to Wings Airfield outside Philadelphia. Hr'g Tr. 27:1-6; 45:25. Los Angeles is a common "source city"

[1] The factual background is taken from the motion papers and the evidence presented at the September 18, 2015 hearing.

for narcotics, while Philadelphia is a common destination. Hr'g Tr. 36:8-13. The Customs and Border Protection Air and Marine Operations Center (AMOC) in California informed HSI that the plane followed an unusual flight path: the plane stopped multiple times across the country to re-fuel and the pilot changed his course headings and altitude frequently, making the flight expensive and causing additional "wear and tear" on the plane. Hr'g Tr. 21:18-22:24; 34:12-17; 35:18-22. While the plane re-fueled in Albuquerque, New Mexico, an informant observed a Hispanic male, who appeared to be between 20 and 30 years of age, accompanying the pilot. Hr'g Tr. 31:12-32:16. That informant also saw a large duffel bag located in the plane and noted that the pilot locked the plane for the few minutes necessary to re-fuel, which seemed odd to Agent Leigh. Hr'g Tr. 32:18-33:2. Later, the plane landed in Cushing, Oklahoma to re-fuel, where another informant observed the plane taxi backwards down the runway, which led him to conclude that the pilot was inexperienced. Hr'g Tr. 37:5-23. HSI was also told that the pilot turned off the plane's transponder for three minutes as it flew over Louisville, Kentucky, which evidenced an attempt to avoid detection. Hr'g Tr. 44:9-22. Finally, HSI determined that evening that Nichols had previously been arrested in Philadelphia for drug possession and carrying a concealed weapon. Hr'g Tr. 38:14-15; 39:8-10.

In the early morning hours of February 4th, approximately 12 local police officers and HSI agents established a perimeter around Wings Airfield for the purpose of conducting surveillance of the plane and its passengers. Hr'g Tr. 48:25-49:6; 79:12-16. Wings Airfield is located on Narcissa Road in a rural area that is not busy or well-traveled at night. Hr'g Tr. 91:5-9. Among the officers present were HSI Special Agents Brian Leigh and Jeffrey Kuc, Whitpain

Township Police Officers William Becker and Homan, and Sergeant John Bleuit, and Abington Township Police Officer and K-9 handler David Scott Dinsmore.[2]

At approximately 2:00 a.m. on February 4th, the plane landed at Wings Airfield. Hr'g Tr. 93:2-4. Officers observed two men who matched the descriptions of Nichols and the Hispanic male passenger exit the plane. Hr'g Tr. 93:4-5; 94:1-5. Each man carried a duffel bag, the man matching Nichols's description also carried a briefcase, and the Hispanic man also carried a backpack. Hr'g Tr. 94:1-5. The men began walking southward down Narcissa Road outside the airfield, and proceeded past Officer Becker's marked patrol car. Hr'g Tr. 92:4-5; 93:22-23. Officer Becker notified his fellow officers that he planned to make contact with the men, and two officers parked nearby (Officer Homan and Sergeant Bleuit) began to drive to Becker's location. Hr'g Tr. 94:13-15; 126:7-11.

Becker followed the men southward, turned on the car's lights and briefly activated the car's siren to signal the men to stop walking, which they did. Hr'g Tr. 94:23-95:4. Becker pulled over, exited the car, shined his flashlight at the men, and asked "What's up guys? How are you doing?" Hr'g Tr. 95:4-5; Ex. 8, 2:25:23-28 (video from Officer Becker's patrol car). Becker was uniformed and armed. Hr'g Tr. 92:2-3; 98:19-20. The men stopped, and Becker thought they appeared nervous. Hr'g Tr. 95:4; 99:3-5. Becker asked them why they were walking down the street at night with bags. Hr'g Tr. 99:18-19. The man matching Nichols's description said they had been on a "short plane ride" that had been terminated because of bad weather and that they were walking to meet their ride. Hr'g Tr. 99:19-22. Becker knew the statement about the "short plane ride" to be false because law enforcement had been tracking the plane. Hr'g Tr. 100:5-7.

[2] All of these officers except Officer Homan testified at the Suppression Hearing held on September 18, 2015.

Approximately one minute after Officer Becker initiated contact with the men, Officer Homan and Sergeant Bleuit arrived in separate vehicles from the south. Hr'g Tr. 97:18-19; Ex. 8, 2:25:16-2:26:22 (video from Officer Becker's patrol car). These officers were also armed, in uniform, and their cars' headlights and emergency lights were activated to illuminate the area where the men stood. Hr'g Tr. 92:6-15; 98:3-24; Ex. 8, 2:26:30. They parked their cars opposite Officer Becker's vehicle in a way that effectively blocked the men from leaving the scene. Hr'g Tr. 129:12-18; Ex. 8, 2:26:30.

Officer Becker asked for identification, and the men produced driver's licenses for Warren Nichols and "Saulo Solorzano," who was later determined to be Raul Rosales. Hr'g Tr. 69:16-18; 96:1-3. Officers Homan and Bleuit informed Nichols and Rosales that there had been multiple thefts from vehicles in the area and the officers asked if the bags contained any stolen property. Hr'g Tr. 100:16-101:5. Nichols replied that there were clothes in his bag, and unzipped his bag and began to move items around. Hr'g Tr. 101:3-11. The officers believed Nichols was attempting to shield the contents of the bag from view with his body, became concerned for their safety, and secured Nichols's and Rosales's consent to be pat down. Hr'g Tr. 101:14-25. No weapons were found in the pat downs. Hr'g Tr. 101:225-102:1. Following the pat downs, Nichols reached into his duffel again, and Sergeant Bleuit observed a white plastic bag inside. Hr'g Tr. 102:5-7; 146:1-4. Bleuit asked what was in the plastic bag. Hr'g Tr. 102:10; 146:3. Nichols removed it from the duffel, said "it's personal," and then handed the white plastic bag to Officer Bleuit. Hr'g Tr. 102:12-15; 146:17-18. After untying the knot at the top of the plastic bag, Bleuit observed inside what he believed to be marijuana. Hr'g Tr. 146:17-147:7.

The officers then attempted to arrest Nichols for possessing marijuana, but Nichols fled down the street without his duffel bag. Hr'g Tr. 103:1-5; 147:8-10. Officer Becker ordered Rosales not to move, but Rosales also fled without his bags. Hr'g Tr. 103:17-21. Nichols and Rosales were both quickly apprehended, returned to the scene, handcuffed, and Rosales was placed in a patrol car. Hr'g Tr. 104:20-21; 105:3-12.

Approximately two minutes later, HSI Agent Leigh arrived at the scene and observed in Nichols's still-unzipped duffel bag the corner of a brick of cocaine. Hr'g Tr. 133:10-21; 134:6-19. Agent Leigh testified that none of defendants' belongings appeared to have been moved or manipulated after defendants attempted to flee. Hr'g Tr. 134:12-13. The officers had already summoned a K-9 handler – Officer Dinsmore with the Abington Police Department – who arrived at the scene with Agent Leigh. Hr'g Tr. 134:25-135:9. The K-9 dog alerted positively to Nichols's duffel bag and Rosales's backpack. Hr'g Tr. 55:13-25; 65:24-66:3; 178:17-18. At this point, officers searched both of those bags, finding three one-kilo bricks of cocaine in Nichols's duffel bag, and a one-kilo brick in Rosales's backpack. Hr'g Tr. 67:17-24; 161:16-17. Nichols and Rosales were formally arrested at this point, and taken to the Whitpain Township police station. Hr'g Tr. 112:2-4; 149:12-14.

HSI Special Agent Kuc interrogated Rosales in a holding cell at the police station. Hr'g Tr. 159:24-160-3. Rosales was Mirandized and he waived his rights. Hr'g Tr. 162:6-24. Rosales admitted that he assisted Nichols in transporting what he knew to be cocaine from California to Philadelphia. Hr'g Tr. 163:1-15.

On March 4, 2015, a Grand Jury returned an Indictment charging Nichols and Rosales with one count of conspiracy to distribute 500 grams or more of cocaine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B), and one count of possession with intent to distribute, and aiding

and abetting the possession with intent to distribute, 500 grams or more of cocaine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B). The Indictment also charged Nichols with one count of possession of marijuana, in violation of 21 U.S.C. § 844.

On August 18, 2015 and August 20, 2015, Nichols and Rosales filed separate Motions to Suppress the physical and verbal evidence against them, respectively. On September 18, 2015, the Court held a hearing on the Motions.

III. LEGAL STANDARD

"On a motion to suppress, the government bears the burden of showing that each individual act constituting a search or seizure under the Fourth Amendment was reasonable." *United States v. Ritter*, 416 F.3d 256, 261 (3d Cir. 2005) (citing *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995)). The government must meet this burden by a preponderance of the evidence. *United States v. Matlock*, 415 U.S. 164, 177 (1974).

The threshold issue in any Fourth Amendment analysis is whether and when someone was seized and, therefore, whether their Fourth Amendment rights are implicated. *United States v. Torres*, 534 F.3d 207, 210 (3d Cir. 2008). If the court finds that there was a seizure, it must next determine whether the search or seizure was reasonable under the circumstances. *Id*.

IV. DISCUSSION

A. <u>The Seizure</u>

In this case, the primary issue is whether and, if so, when defendants were seized. If there was a seizure, the Court must next examine whether the seizure was sufficiently limited in scope and duration that it can be justified by only reasonable suspicion, or whether it was so intrusive as to require probable cause. *See, e.g.*, *United States v. Johnson*, 592 F.3d 442, 451 (3d Cir. 2010).

1. Timing of the Seizure

To determine whether there was a seizure, courts look to whether law enforcement officers applied physical force or made a show of authority to which the suspect submitted. *California v. Hodari D.*, 499 U.S. 621, 626 (1991). An officer makes a show of authority if a reasonable person, in the same contextual setting, would not believe they were free to leave. *Id.* at 627-28; *United States v. Mendenhall*, 446 U.S. 544, 552, 554 (1980). A person can submit to a show of authority by standing still. *United States v. Lowe*, 791 F.3d 424, 434 (3d Cir. 2015).

Many aspects of police conduct can be relevant to a show of authority analysis, including the presence of several officers, an officer's wearing a uniform or displaying a weapon, physical contact with the suspect, the use of language or tone of voice indicating that compliance with the officer's request might be compelled, activating sirens or lights, or operating a "car in an aggressive manner to block [the suspect's] course or otherwise control the direction or speed of his movement." *Michigan v. Chesternut*, 486 U.S. 567, 575 (1988); *Mendenhall*, 446 U.S. at 554. On the other hand, a mere approach by law enforcement officers that a reasonable person would feel free to rebuke does not constitute a seizure. *Florida v. Royer*, 460 U.S. 491, 497 (1980).

Applying this law to the facts of this case, the Court finds that both defendants were stopped when Officer Becker initially approached them. Officer Becker was armed, uniformed, and in a marked patrol car with the emergency lights and siren activated. While he may have called to the defendants in a casual tone, he followed them down the road until they stopped and submitted to his authority. Further, Officer Homan and Sergeant Bleuit, also armed and in uniform, arrived only one minute later, and positioned their vehicles—with the headlights and emergency lights on—in a way that blocked defendants' ability to walk away from the

confrontation. Combined, these factors would make a reasonable person believe that they were not free to leave. Indeed, defendants did not attempt to flee at this point, but stood still and answered the officers' questions. Thus, defendants submitted to the officers' show of authority and were seized as of that time.

2. Type of Seizure

The Court next turns to the question of whether this seizure was so intrusive as to require probable cause, or whether it was sufficiently limited that it can be justified by reasonable suspicion.

While seizures usually must be authorized by a warrant based on probable cause, an officer may stop an individual for investigatory purposes if he has reasonable suspicion that criminal activity may be afoot, *Terry v. Ohio*, 392 U.S. 1, 20 (1968). The conduct of a so-called *Terry* stop must be justified by the information known to the officer at the initiation of the stop and must be limited in scope by the circumstances that justified the interference in the first place. *Royer*, 460 U.S. at 500 (comparing a *Terry* stop to a search incident to arrest, which permits searching only the area within the arrestee's immediate control, as an example of a search limited by its underlying justification). There is no bright-line test for distinguishing between a *Terry* investigative stop and an arrest, but in determining "whether a stop is so minimally intrusive as to be justifiable on reasonable suspicion, courts consider the duration of the stop, the law enforcement purposes justifying the stop, whether the police diligently sought to carry out those purposes given the circumstances, and alternative means by which the police could have served their purposes." *United States v. Leal*, 235 F.App'x 937, 941 (3d Cir. 2007) (internal quotation and citation omitted). "Ultimately, it is the government's burden to demonstrate that any detention or seizure justified on the basis of reasonable suspicion was sufficiently limited in

scope and manner to satisfy the conditions of an investigative stop." *United States v. McGrath*, 89 F. Supp. 2d 569, 577 (E.D. Pa. 2000) (DuBois, J.) (citing *Royer*, 460 U.S. at 500).

Nichols concedes that the seizure only rose to the level of a *Terry* stop requiring reasonable suspicion. On the other hand, Rosales argues that defendants' initial encounter with law enforcement constituted an arrest without probable cause.

The Court rejects Rosales's argument and concludes that the initial stop was a *Terry* stop.[3] Defendants were seized for only ten minutes before they attempted to flee, and for less than twenty-five minutes by the time the K-9 sniff was complete. Hr'g Tr. 111:25-112:1; Ex. 8, 2:25:16-2:48:48 (video from Officer Becker's patrol car). As to the length of the seizure, the Court concludes that defendants were detained no longer than necessary for law enforcement to investigate its suspicion that defendants were travelling with narcotics, and any prolonging of the detention was validated by defendants' consent to pat downs and a search or by new facts that increased the officers' suspicion. *See Dunaway v. New York*, 442 U.S. 200, 212 (explaining that valid *Terry* stops permit officers to question individuals or ask them to explain suspicious circumstances, "but any further detention or search must be based on consent or probable cause" (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 881-82 (1975))); *cf. Leal*, 235 F.App'x at 941-42 (concluding that detention of defendant for eighty minutes while waiting for arrival of

[3] Rosales argues that the seizure required probable cause because the officers already intended to arrest defendants before any seizure occurred. At the hearing, Rosales's counsel attempted to clarify this argument by explaining that he was referring to the "objective attitudes" of the officers in this case, and not the subjective intent of the officers. Hr'g Tr. 189:14-16. Rosales has not provided any authority for this position. The Court rejects this argument.

The intent of law enforcement is irrelevant to whether there is a Fourth Amendment violation: "the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." *Whren v. United States*, 517 U.S. 806, 813 (1996) (citation omitted); *see also Devenpeck v. Alford*, 543 U.S. 146, 154-55 (2004) (explaining that the "intent of the arresting officer. . . is simply no basis for invalidating an arrest."). Therefore, regardless of whether the officers in this case planned to arrest defendants before ever encountering them, their actions in stopping them and obtaining consent for various searches were justified by the objective facts that they knew at the time the seizure began.

K-9 unit did not invalidate *Terry* stop). With respect to the scope of the seizure, the officers' actions were confined to carrying out the investigative purpose of the stop because the initial seizure of defendants was limited to a conversation with the officers who stood several feet away. The actions taken by the officers after the initial stop—examining defendants' property and patting them down for weapons—were authorized by defendants. Accordingly, because the seizure in this case was a *Terry* stop and not an arrest, the Court concludes that this stop required only reasonable suspicion to be justifiable under the Fourth Amendment.

B. <u>Validity of the Seizure: Reasonable Suspicion</u>

As explained above, a limited seizure for investigative purposes is permissible under the Fourth Amendment if the officer has reasonable suspicion that criminal activity may be afoot. *Terry v. Ohio*, 392 U.S. 1 (1968). Reasonable suspicion must be particularized as to the individual seized and must be justified by objective criteria. *United States v. Cortez*, 449 U.S. 411, 417 (1981). A *Terry* stop based on reasonable suspicion is a valid seizure under the Fourth Amendment. *United States v. Arvizu*, 534 U.S. 266, 273 (2002).

Reasonable suspicion can be based entirely on innocent or legal conduct that, in the officer's experience, is indicative of potential criminal activity. *United States v. Sokolow*, 490 U.S. 1, 9-10 (1989). For example, unusual means of travel or strange behavior while travelling—although technically legal—can create reasonable suspicion. *Id.* (holding that agents had reasonable suspicion to stop and question a suspected drug courier because he paid cash for plane tickets, traveled under an alias to a source city for drugs, stayed there for a short time despite his long trip, appeared nervous, and checked no luggage). Other factors relevant to reasonable suspicion relate to the context of the stop, such as the time and location of the encounter. *Michigan v. Long*, 463 U.S. 1032, 1050 (1983) (justifying *Terry* stop in rural area in

part because of the late hour). Still other factors pertain to the individual stopped, such as whether he has a criminal history relevant to the suspected crime, *United States v. Mathurin*, 561 F.3d 170, 177 (3d Cir. 2009), or whether he attempts to evade the detection of law enforcement, *United States v. Thomas*, No. 08 Cr. 20, 2009 WL 424589, at *4 (D. V.I. Feb. 29, 2009) (concluding officers had reasonable suspicion when individual apparently attempted to evade police detection by hiding in the back of a vehicle); *cf. United States v. Brignoni-Ponce*, 422 U.S. 873, 885 (1975) (noting that "erratic driving or obvious attempts to evade officers could support a reasonable suspicion" of illegal border crossing).

1. Reasonable Suspicion as to Nichols

Applying the law applicable to a *Terry* stop to this case, the Court finds that the officers had reasonable suspicion to stop Nichols. Law enforcement had gathered substantial information about his unusual means of travel, including: the uncommon cross-country flight in a small plane, which required frequent refueling stops and likely damaged the plane itself; travel from a source city to a common destination for narcotics; locking the plane in New Mexico for only a short stop; taxiing the wrong way down the runway, indicating inexperience; and turning off the transponder over Kentucky, which evidenced an attempt to avoid detection.

Nichols argues that none of this activity was illegal, and therefore it cannot provide the sole support for reasonable suspicion, but that is not the law. In *Sokolow*, the defendant did not do anything illegal when he paid cash for plane tickets, traveled under an alias to a source city for drugs, stayed there for a short time despite his long trip, appeared nervous, and checked no luggage. 490 U.S. at 4-5. Nonetheless, the Supreme Court held that this behavior *alone* was sufficient to raise a reasonable suspicion in the opinion of experienced law enforcement officers that the defendant was trafficking narcotics. *Id.* at 9-10. In this case, law enforcement had even

more information about Nichols than the officers in *Sokolow*, for HSI determined that Nichols had previously been arrested in Philadelphia for drug trafficking—a criminal history that is directly relevant to the illegal activity that law enforcement suspected he was committing the night of February 3rd. Law enforcement could also interpret the facts that Nichols turned off the transponder, arrived in the middle of the night at a small rural airport, and left the airport on foot to walk down a dark, unfrequently traveled road as evidence that he was attempting to avoid detection by law enforcement. *See Long*, 463 U.S. at 1050 (1983). These facts, in addition to the unusual travel plans, provide a sufficient basis for the Court to conclude that the officers had reasonable suspicion to stop Nichols. Thus, the seizure of Nichols did not violate his rights under the Fourth Amendment.

2. Reasonable Suspicion as to Rosales

Rosales takes the position that there was no reasonable suspicion particularized as to him because the only information obtained by law enforcement pertained to Nichols. Specifically, Rosales contends that law enforcement's only knowledge particular to him was that there was a Hispanic male on the plane and argues that "mere propinquity to others independently suspected of criminal activity" is insufficient alone to support reasonable suspicion. *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979). The Court rejects this argument.

Ybarra involved searches of tavern patrons based on a search warrant for the tavern bartender, who was suspected of trafficking in heroin. *Id.* at 88-89. The frisk of one patron revealed that he also happened to possess heroin. *Id.* The Supreme Court held that the search of the patron violated the Fourth Amendment because the only thing the police knew about the patron when he was searched was that he happened to be in the public tavern where the bartender

worked, and this was insufficient alone to constitute probable cause as to the patron. *Id.* at 90-91.

Ybarra is distinguishable from this case. Many courts have found that reasonable suspicion or probable cause created by one person may "taint" another who appears to be partnered or associated with the first. *See, e.g.*, *United States v. Martinez-Molina*, 64 F.3d 719, 727-28 (1st Cir. 1995) (citing cases); *United States v. Tehrani*, 49 F.3d 54 (2d Cir. 1995); *United States v. Patrick*, 899 F.2d 169 (2d Cir. 1990); *United States v. Pitts*, No 10 Cr. 703, 2011 WL 940245, at *7 n.4 (E.D. Pa. Mar. 15, 2011) (Robreno, J.) (holding that "proximity to a suspicious individual plus other relevant circumstances may create probable cause"). "One important consideration in assessing the significance of the association is whether the known criminal activity was contemporaneous with the association. Another is whether the nature of the criminal activity is such that it could not normally be carried on without the knowledge of all persons present." *United States v. Hillison*, 733 F.2d 692, 697 (9th Cir. 1984) (internal citations omitted).

This case is more similar to *United States v. Patrick*, 899 F.2d 169, than to *Ybarra*. In *Patrick*, a man and a woman entered the U.S. immigration office at Niagara Falls on foot. *Id.* at 170. They were the only pedestrians in the office at the time. *Id*. They both told the customs inspector that they had accidentally crossed the border from the United States to Canada on a bus and that, upon realizing the mistake, they left the bus and walked back across the border to the United States. *Id*. The customs officer found this story somewhat suspicious, and directed the individuals to an inspection point where their belongings were searched. *Id*. Plastic bricks of cocaine base were found in the woman's purse, and both individuals were arrested and charged with possession and unlawful importation of narcotics. *Id*. The man moved to suppress the

evidence from the search, arguing that he was arrested without probable cause particularized as to him. *Id.* at 171. The Second Circuit held that the officers had probable cause to arrest the man when they knew that the man and woman "entered the office together, both with knapsacks, at a time when no other civilian pedestrians were about. . . [and,] indicating that they were traveling together, they both told [the officer] the unusual story of accidentally crossing the border." *Id.*; *see also Tehrani*, 49 F.3d at 56 (holding that an officer had reasonable suspicion to detain a suspect because the suspect could not explain how he had entered the country and admitted that he travelled with another man who was reasonably suspected of illegally crossing the border).

In this case, it was reasonable for law enforcement to believe that Rosales was the same Hispanic male observed traveling on the plane in New Mexico hours earlier. Therefore, it was reasonable to infer that Rosales had traveled from Los Angeles—a source city for drugs—to Pennsylvania—a common destination for drugs—with Nichols, and that Rosales was also attempting to evade the detection of law enforcement by travelling across the country on a small plane that followed a suspicious flight path. Further, Rosales spent many hours on the plane that was piloted by an individual who had been arrested for possession of drugs and a concealed weapon. Once they left the plane, defendants behaved as if they were associates: they were alone and walking together, not independently, down a lightly-traveled, dark, deserted back road in the middle of the night. They carried similar sets of bags and were not in a public place. Unlike the tavern patron in *Ybarra*, Rosales cannot credibly claim that he was simply in the wrong place at the wrong time.

Additionally, this case meets the Ninth Circuit's standard set forth in *Hillison*, 733 F.3d 692, 697. First, Rosales appeared to have been on the plane with Nichols during the time that it

was suspected of being used to transport narcotics. Second, the nature of drug trafficking in this case "is such that it could not normally be carried on without the knowledge of all persons present." Rosales was with Nichols alone, on a small plane, for many hours. "[I]t taxes credulity to assert that [Rosales] spent as much time in [Nichols's] company as he did. . .without knowing about [Nichols's] drug dealing activity." *Id.*

C. Abandonment

Rosales next argues that the search of the bags on the roadside after he fled cannot be justified by the abandonment exception to the warrant requirement because the illegal seizure of defendants precipitated the abandonment, making it involuntary. Rosales Br. at 15-16. The threshold issue for this abandonment argument, therefore, is whether the defendants were illegally seized. Because the Court has already determined that the seizure was legal, the Court rejects this argument.

Defendants do not argue that any other illegal activity by law enforcement could have rendered their alleged abandonment involuntary, nor do they challenge the officers' conduct of the stop after it began.

V. CONCLUSION

For the foregoing reasons, the Court denies defendant Warren Nichols's Motion to Suppress Physical Evidence and denies defendant Raul Rosales's Motion to Suppress Physical Evidence and Post-Arrest Statements. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES	**CRIMINAL ACTION**
v.	
WARREN NICHOLS	**NO. 15-85 -01**
RAUL OSVALDO ROSALES, also known as "SAULO SOLORAZANO"	**-02**

O R D E R

AND NOW, this 8th day of October, 2015, upon consideration of defendant Warren Nichols's Motion to Suppress Physical Evidence (Document No. 38, filed August 17, 2015), defendant Raul Rosales's Motion to Suppress Physical Evidence and Post-Arrest Statements (Document No. 41, filed August 20, 2015), and the Government's Combined Response in Opposition to Defendants' Motions to Suppress Evidence (Document No. 42, filed September 4, 2015), following an evidentiary hearing and oral argument held on September 18, 2015, for the reasons set forth in the accompanying Memorandum dated October 8th, 2015, **IT IS ORDERED** that defendant Nichols's Motion to Suppress Physical Evidence and defendant Rosales's Motion to Suppress Physical Evidence and Post-Arrest Statements are **DENIED**.

BY THE COURT:

DuBOIS, JAN E., J.